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and Jani-King International, Inc.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TERVON, LLC, a California limited liability
company, SUNYATA LITTLE and
ELEANOR LITTLE, individual; and MARIO
GUTIERREZ, an individual;

Plaintiffs,

v.

JANI-KING OF CALIFORNIA, INC., a Texas
corporation, JANI-KING OF TEXAS, INC., a
Texas corporation; JANI-KING
INTERNATIONAL, INC., a Texas corporation;
and DOES 1-100, Inclusive,

Defendants.

Case No. **'14CV0367 BEN JMA**

DEFENDANTS' NOTICE OF REMOVAL
UNDER 28 U.S.C. SECTION 1441(b)

Defendants Jani-King of California, Inc. ("Jani-King California") and Jani-King International, Inc. ("Jani-King International") (collectively "Defendants")¹ file and serve this notice of removal to remove this action from the Superior Court of the State of California, County of San Diego, Central Division, to this court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Removal is based on the following grounds:

1. Plaintiffs Tervon, LLC, Sunyata Little, Eleanor Little, and Mario Gutierrez commenced this lawsuit against Defendants on or about January 15, 2014. The lawsuit bears the same title as above and is docketed in the Superior Court of San Diego County, California, as Case No. 37-2014-00083675-CU-FR-CTL (the "State Court Action").

2. Jani-King California received the summons and the complaint in the State Court Action on January 16, 2014, by personal service. Jani-King International received the summons and the complaint in the State Court Action on January 21, 2014, by personal service. The entity Jani-King of Texas, Inc., does not exist, and there have been no discernible attempts to serve any alleged entity with that name. All defendants that actually exist, and all defendants that have been served, consent to removal.

3. Pursuant to 28 U.S.C. §1446(a), a copy of the entire record for the State Court Action record is attached hereto as appendix pages 1 through 144.

4. Plaintiff Tervon, LLC, is now, and was at the commencement of this action, a California corporation with its principal place of business in California. (Appendix p. 2, ¶ 1.)

5. Plaintiffs Sunyata Little, Eleanor Little, and Mario Gutierrez are individuals and citizens of the State of California. (*Id.*, ¶¶ 2-3.)

6. Defendant Jani-King California is a citizen of the State of Texas with its principal place of business in Addison, Texas. (*Id.*, ¶ 5.)

¹ The complaint's caption lists a nonexistent entity called "Jani-King of Texas, Inc." as a defendant. However, the body of the complaint lists Jani-King, Inc. as a defendant. (See Exhibit A at ¶ 6.) Plaintiffs have not made any discernible effort to serve either "Jani-King of Texas, Inc." (which does not exist) or Jani-King, Inc.

7. Defendant Jani-King International is a citizen of the State of Texas with its principal place of business in Addison, Texas. (Appendix pp. 2-3, ¶ 7.)

8. Plaintiffs seek recovery of an amount in excess of \$75,000, exclusive of interest and costs. The allegations in the complaint and corresponding circumstances substantiate this notion. Here's why. Plaintiffs seek *inter alia* alleged lost profits associated with cleaning Qualcomm Stadium after San Diego Chargers National Football League games and San Diego State University college football games for each of their three Jani-King franchises. (Appendix pp. 2, 5-8, 12, ¶¶ 1-3, 26-28, 34-44, and 61-64.) Specifically, plaintiffs allege they were each entitled to \$3,261.49 "profit for each Charger game" and \$1,178.02 "profit for each Aztec game." (Appendix p. 6, ¶ 28.) Plaintiffs further allege they suffered these alleged damages starting in the 2012 seasons for the San Diego Chargers and the San Diego State University Aztecs. (*Id.*)

9. Plaintiffs claim they suffered losses of \$9,784.47 for each Chargers game (i.e., three franchises multiplied by \$3,261.49) and \$3,534.06 (i.e., three franchises multiplied by \$1,178.02) for each Aztec game.

10. In 2012, the San Diego Chargers hosted ten games. (*See* "2012 San Diego Chargers Home Schedule" at <http://www.fbschedules.com/nfl-12/2012-san-diego-chargers-football-schedule.php>, a true and correct copy of which is also attached as appendix pages 145 and 146; *see* declaration of Jonathan P. Geen.) For Chargers games alone, plaintiffs allege damages of \$97,844.70.

11. In 2012, the San Diego State University Aztecs hosted ten games. (*See* 2012-2013 schedule at <http://www.fbschedules.com/ncaa-12/mtn-west/2012-san-diego-state-aztecs-football-schedule.php>, a true and correct copy of which is also attached as appendix pages 147 and 148; *see* declaration of Jonathan P. Geen.) For Aztec games, plaintiffs allege damages of \$35,340.60.

12. The total amount of damages plaintiffs seek in alleged lost profits for 2012 alone is \$133,185.30. (Plaintiffs also seek punitive damages, statutory penalties, attorneys' fees, and restitution (Appendix pp. 21-22, "Prayer for Relief").)

1 13. Thus, this is a civil action between citizens of different states, and the matter in
2 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. The action is one in
3 which the United States district courts have original jurisdiction pursuant to 28 U.S.C. § 1332 and
4 may therefore be removed to this court.

5 14. Both Jani-King California and Jani-King International will promptly provide notice of
6 the removal of this action to plaintiffs and to the Superior Court of San Diego County, California, by
7 filing a "Removal Notice to the United States District Court for the Southern District of California,"
8 together with a copy of this "Defendants' Notice of Removal," in the Superior Court of San Diego
9 County, California, and by serving copies of the same on plaintiffs pursuant to 28 U.S.C. § 1446(d).

10 WHEREFORE, defendants Jani-King California and Jani-King International respectfully
11 requests that this action be removed to this court.

12
13 Dated: February 14, 2014

BORTON PETRINI, LLP



Paul Kissel
Jonathan P. Geen

16 OF COUNSEL:

17 GARDERE WYNNE SEWELL LLP

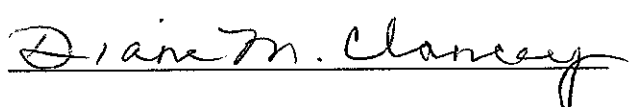
18 /s/Peter L. Loh
19 Peter L. Loh

20 Attorneys for Defendants Jani-King of California,
21 Inc. and Jani-King International, Inc.

22 **CERTIFICATE OF SERVICE**

23 I certify that a true and correct copy of the foregoing document was forwarded via electronic
24 mail and certified mail on the 17 day of February, 2014, to:

25 Kara Gervais, Esq.
26 Gervais Law
27 10636 Scripps Summit Court, Suite 142
28 San Diego, CA 92131



Diane M. Clancy